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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 In re: New York, N.Y.  
4 Fletcher International, Ltd. 14 Cv. 2836 (WHP)

5 -----x

6 July 18, 2014  
7 2:50 p.m.

8 Before:

9 HON. WILLIAM H. PAULEY III,

10 District Judge

11 APPEARANCES

12  
13 STEWART TURNER  
14 Pro Se Appellant

15 ALPHONSE FLETCHER, JR. (via telephone)  
16 Pro Se Appellant

17 LUSKIN, STERN & EISLER, LLP  
18 Attorneys for Appellee Richard J. Davis, Trustee  
19 BY: MICHAEL LUSKIN

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1 (In the robing room)

2 THE COURT: Good afternoon. This is Judge Pauley.  
3 You are on a speakerphone in my robing room and a court  
4 reporter is present, recording what is being said.

5 Are you there?

6 MR. FLETCHER: I am. Good afternoon.

7 THE COURT: Would you give us your name for the  
8 benefit of the court reporter.

9 MR. FLETCHER: This is Alphonse Fletcher, Jr.

10 THE COURT: All right. Good afternoon, Mr. Fletcher.  
11 I am joined by the appellant.

12 MR. TURNER: Stewart Turner, for the record.

13 THE COURT: Good afternoon, Mr. Turner.

14 MR. TURNER: Good afternoon.

15 THE COURT: And counsel for the estate.

16 MR. LUSKIN: Michael Luskin, Luskin, Stern & Eisler,  
17 for the Chapter 11 trustee.

18 THE COURT: I have before me Mr. Luskin's letter  
19 seeking leave to make a motion to require appellant to post a  
20 bond in this case.

21 Have you seen the letter, Mr. Turner?

22 MR. TURNER: Yes, I have.

23 THE COURT: Do you want to submit a letter or shall I  
24 simply fix a motion schedule?

25 MR. TURNER: I thought we were going to discuss it

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1 today, but I am happy to prepare a motion.

2 THE COURT: I am glad to discuss it also, if we can  
3 endeavor to resolve it.

4 MR. TURNER: Okay. May I proceed?

5 THE COURT: Yes. Go ahead.

6 MR. TURNER: I don't believe that a bond should be  
7 part of this. I am not requesting a stay. I have never  
8 requested a stay. But the agreement itself calls for the  
9 closing date to be 14 days after the latest stay of appeal, so  
10 I believe bonds have to be put up in regard to requesting a  
11 stay, but the document, the agreement between Fletcher  
12 International Ltd., under trustee Davis, and United itself has  
13 a contractual provision in it that would not require a bond  
14 because a stay is not required.

15 THE COURT: Mr. Luskin, do you want to respond?

16 MR. LUSKIN: On that, just very briefly. The kind of  
17 bond that Mr. Turner is talking about is a supersedeas bond.  
18 That's not the issue here. This is a prospective-looking bond  
19 under appellate --

20 THE COURT: Keep your voice up.

21 MR. LUSKIN: -- under Federal Rule of Appellate  
22 Procedure 7, which is a forward-looking rule to impose costs.  
23 And, frankly, I think that the difficult issue that I have  
24 presented to your Honor or would on a motion if we can't  
25 proceed just on the basis of the letters, which I am happy to

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1 do, is whether or not Rule 38 damages, which would include  
2 attorney's fees for a meritless appeal, should be awarded.  
3 Your Honor has written on that. There are other cases. There  
4 is a Second Circuit case. I am prepared to argue those. But I  
5 don't know that we are all prepared to do that today.

6 I do think that both of these appeals --  
7 Mr. Fletcher's and Mr. Turner's -- involve discretionary  
8 matters that were relegated first to the discretion of the  
9 trustee, then to the discretion of the bankruptcy court. Your  
10 Honor reviewed both decisions for abuse of discretion or clear  
11 error to the extent there were fact findings.

12 This is not a case like the *Currency Conversion* case  
13 or *Adsani*, for that matter, because these decisions have  
14 already been reviewed once. You are sitting as an appellate  
15 court. You have probably the best position of anyone to know  
16 whether or not there is merit to these appeals. I know, again,  
17 in *Currency Conversion*, you wrote that that was really a  
18 question for the Court of Appeals, but I think in this case,  
19 respectfully, I would ask that you exercise your discretion in  
20 favor of assessing the merits of these appeals, determining  
21 that, if you find them meritless, sanctions are likely to be  
22 assessed, that they be included as Rule 38 costs, which can be  
23 included in Rule 7 costs.

24 So that's really the entirety of my argument. The  
25 rest is detail. This is not a bond seeking a stay. The

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1 supersedeas bond, the kind of bond Mr. Turner is talking about,  
2 is one he would seek if he was seeking a stay. We don't need a  
3 stay here.

4 MR. TURNER: I believe that there are some errors.  
5 One thing that Mr. Luskin said that I do agree, you may be,  
6 unfortunately, in the best position to decide because you have  
7 seen things that Judge Gerber has not seen, although you have  
8 not seen everything, or at least I haven't seen everything.

9 When we were in the courtroom in May, Mr. Luskin had  
10 said that Judge Gerber had used the term "recombination" in a  
11 case to mean reverse stock split. He also called it a term of  
12 art. I am not aware, and I am in this business, I am not aware  
13 of "recombination" as a term of art in reference to a reverse  
14 stock split. It is referenced to combining deals, as mergers  
15 between companies. Sprint a couple of years ago had its  
16 regular stock and a tracking stock, PCS, and at some point you  
17 might call it a one-for-two reverse split, but the PCS shares  
18 were converted into FON shares.

19 There is another case, I have done QRCP and turned it  
20 into PSTR, a handful of cases with the word "recombination."

21 A Westlaw search for Judge Gerber and the word  
22 "recombination" didn't find anything. I couldn't find anything  
23 for it on Google. At the very least I would like to see Judge  
24 Gerber's unpublished decision before we rule. I believe it  
25 impacted your decision, as you said in a footnote at the bottom

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1 of page 2 of your ruling, that both the trustee and UCBI  
2 believe "recombination" means "reverse stock split." I have  
3 other cases where the word "recombination" doesn't mean  
4 "reverse stock split." It could be a stock split, reverse  
5 stock split, a recombination, or something else.

6 I think that issue needs to be explored further.

7 THE COURT: Do you want to make any submission to me?  
8 If I treat Mr. Luskin's letter as the application for the  
9 posting of a bond -- and I am prepared to do that -- if you  
10 wish to submit a letter or some memorandum to me in opposition  
11 to that, I will permit it, and then I will decide the question.

12 MR. TURNER: It sounds like I should, because  
13 otherwise there is one letter for him and no letter for me.

14 THE COURT: It would be helpful.

15 MR. TURNER: Okay. If it would be helpful, then I am  
16 happy to do so, your Honor.

17 THE COURT: I will place one question in front of you  
18 now that you can answer now or answer in your letter, but do  
19 you have available to you some financial resources to post some  
20 sort of bond with respect to the appeal if I were to require  
21 it?

22 MR. TURNER: Not in the amount of \$50,000. I could  
23 put up a \$500 bond. I don't really have any more, and that  
24 would actually be a stretch.

25 THE COURT: When do you want to submit a letter to me?

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1 And you can do it in the form of a letter if you would like,  
2 addressing the four factors that Mr. Luskin has outlined in his  
3 letter application.

4 MR. TURNER: I would have to review the cases closely  
5 as well. Is two weeks acceptable, your Honor?

6 THE COURT: Do you have any problem with that?

7 MR. LUSKIN: Your Honor, I do only because this is  
8 holding up a closing. Chambers rules did require him to file a  
9 letter a week ago. He didn't do that. He has had my letter  
10 for two or three weeks now, and I just --

11 THE COURT: How about filing a letter response by next  
12 Friday, July 25?

13 MR. TURNER: I will do so, your Honor.

14 THE COURT: All right? And I will decide the matter  
15 promptly.

16 MR. TURNER: May I include attachments? Or --

17 THE COURT: It is really not an evidentiary matter,  
18 and it is not an opportunity for reargument of the case. You  
19 need to address yourself to the factors that are set forth in  
20 Mr. Luskin's letter with respect to the appeal, and they are  
21 also set forth in my decision in *Currency Conversion*, which is  
22 cited in his letter.

23 MR. TURNER: May I have a copy of the Judge Gerber  
24 decision that he --

25 MR. LUSKIN: I'm not sure what he is referring to.

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1 MR. TURNER: The one you referred to in court where --

2 MR. LUSKIN: I heard you, but --

3 MR. TURNER: -- "recombination" means "reverse stock  
4 split."

5 THE COURT: The court reporter can only take one voice  
6 at a time, and both of you will address your remarks to the  
7 court.

8 Are we going to be following the same procedure with  
9 respect to Mr. Fletcher? Mr. Fletcher, do you want to be  
10 heard?

11 MR. FLETCHER: First, I would like to submit a letter  
12 prior to you making a decision, your Honor, if I may.

13 THE COURT: You may do so by next Friday, July 25.

14 MR. FLETCHER: Thank you. I will do that.

15 The only other thing that I would add is that I  
16 believe the general picture perhaps has been missing from these  
17 proceedings. I will try to address the specific issues that  
18 are called for by Mr. Luskin's letter and those cases, but it  
19 is also interesting that it reflects back on the case  
20 generally; and I think in the absence of that information, it  
21 is difficult for the court to -- I just think that information  
22 is helpful to the court in reaching its ultimate decision.  
23 While Mr. Turner has excellent points and is very knowledgeable  
24 about these issues and I believe correct, getting buried in  
25 what recombinations are versus recapitalizations versus reverse



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1 stock splits could lead to the right answer, but it seems like  
2 a difficult task to try to bring to the court.

3 I think the answer is more easily found in the fact  
4 that the court and the system relies on these fiduciaries to be  
5 disinterested and to maximize the value of the estate. To the  
6 extent they are, they are given great latitude. But in this  
7 case, despite the fundamental tenets of the Bankruptcy Code,  
8 despite the key factor in *TNT*, the arm's length negotiations,  
9 all those things are wrong in this case and the net effect has  
10 been to impair our ability to bring facts to the court. I  
11 believe that creates the excusable neglect that we have seen,  
12 and I think if all those facts are properly presented to the  
13 court, this settlement will be, at a minimum, reviewed more  
14 carefully; if not --

15 THE COURT: Your colloquy to the court just now  
16 suggests to me a misapprehension about what the proceeding is  
17 that is before me, which is an application by the estate to  
18 require you and Mr. Turner, as appellants, to post a bond and  
19 there are four factors involved. They are set forth quite  
20 clearly in Mr. Luskin's letter, and that is the matter on which  
21 I am inviting a submission. I have decided the appeal, and  
22 this is not an invitation to relitigate the appeal. So please  
23 keep that in mind.

24 Mr. Luskin, if you feel the need to submit anything  
25 further based upon what either Mr. Fletcher or Mr. Turner

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1 submit to me next Friday, please do so by Tuesday, July 29.

2 MR. LUSKIN: I will do that, your Honor. May I do it  
3 in a single letter? I know technically we have two appeals.

4 THE COURT: You can do it in a single letter.

5 MR. LUSKIN: I will do that. If need be, that's what  
6 I will do.

7 THE COURT: All right, gentlemen. Anything further?

8 MR. FLETCHER: Your Honor, no. I would just say I  
9 understand the point you were making, and I will stick to that.  
10 Thank you.

11 THE COURT: Thank you very much.

12 Anything further, Mr. Turner?

13 MR. TURNER: Two technical questions.

14 One, can I submit it electronically using the same  
15 case filing that we did even though that's closed use?

16 MR. LUSKIN: I submitted my letter electronically,  
17 your Honor.

18 THE COURT: Yes. Use ECF.

19 MR. TURNER: Okay, fine.

20 THE COURT: You can put it in letter form, but you  
21 have to sign it, and the same goes for you, Mr. Fletcher. All  
22 right?

23 MR. FLETCHER: Yes, your Honor.

24 MR. TURNER: And if I could get a copy of that --

25 THE COURT: You will take it up with Mr. Mr. Luskin

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1 Mr. Luskin.

2 MR. LUSKIN: Show me what you are talking about.

3 THE COURT: You will take it up after the proceedings  
4 conclude here.

5 MR. LUSKIN: Thank you, your Honor.

6 MR. TURNER: Thank you.

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